

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 25 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF
SE-5J

Enbridge Energy, Limited Partnership
c/o Rich Adams
Vice President, Operations
Superior City Centre
Second Floor
1409 Hammond Avenue
Superior, Wisconsin 54880

Subject: Enbridge Oil Spill located in Marshall, Michigan
Information Request pursuant to Sections 308, 311 of the Clean Water Act, 33
U.S.C. §§ 1318 and 1321, the Administrative Order ("Order") dated July 27, 2010,
and the Supplement to the Order ("Supplement") dated September 23, 2010.

Dear Mr. Adams:

The U. S. Environmental Protection Agency is continuing to investigate the source, extent, and nature of an oil spill (at least 840,000 gallons of oil) which discharged into or upon the navigable waters of the United States and adjoining shorelines from the Enbridge Energy, Limited Partnership on-shore pipeline and pumping station that carries oil, located at or near 16000 Division Drive in Marshall, Michigan ("Marshall Facility") that was reported by Enbridge Energy to the National Response Center on, or about, 1:33 pm on July 26, 2010. This investigation requires inquiry into the events for, among other things, possible violations of the Federal Clean Water Act ("Act" or "CWA"), 33 U.S.C. § 1251, *et seq.*, which prohibits the discharge of oil or hazardous substances into waters of the United States¹ or adjoining shorelines in such quantities as may be harmful and the discharge of pollutants from point sources to waters of the United States. EPA is seeking information regarding Enbridge's response to its oil spill at the Marshall Facility. Specifically, EPA seeks information related to the Kalamazoo River Hydrodynamic and Sediment Transport Model Report, dated April 20, 2012, and the Addendum, dated May 8, 2012 (hereinafter referred to together as "HDM Report"), which Enbridge prepared pursuant to the Administrative Order and Supplement.

EPA is requiring Enbridge Energy, Limited Partnership ("you") to produce the documents and information in response to the enclosed Information Request pursuant to the authority of Sections 308(a), 311(m) of the Clean Water Act ("the Act"), 33 U.S.C. §§ 1318(a) & 1321(m), and Paragraph 23 of the Administrative Order and Supplement. EPA believes this information is

¹ Waters of the United States is defined at 40 CFR 122.2.

necessary to determine appropriate endpoints for the cleanup of the Kalamazoo River and the transition of the site's management to Michigan Department of Environmental Quality ("MDEQ"). You must send these documents and information to EPA **within 21 calendar days** after you receive this Information Request.

Failure to respond fully and truthfully to each Information Request item within the 21 calendar day time period can result in enforcement action by EPA pursuant to Section 309 of the Act, 33 U.S.C. § 1319, which, along with the Debt Collection Improvement Act of 1996 is implemented by the regulations at 40 C.F.R. Part 19, "Adjustment of Civil Penalties for Inflation," and authorizes the United States to seek penalties from a federal court of up to \$37,500 for each day of continued non-compliance. Moreover, failure to comply with the Order or Supplement can result in enforcement action pursuant to Section 311(b)(7)(B) of the CWA, 33 U.S.C. § 1321(b)(7)(B). EPA considers "non-compliance" to be not only failure to respond to this Information Request but also failure to respond completely and truthfully to each Information Request. Please be further advised that provision of false or fraudulent statements or representations may subject you to criminal penalties or up to 5 years of imprisonment or both under 18 U.S.C. § 1001. Failure to provide the information directed herein by the dates specified may also result in Enbridge non-compliance with the Order. Pursuant to Paragraph 26 of the Order, violation of any term of the Order may subject Enbridge to a civil penalty of up to \$37,500 per day of violation or an amount up to three times the cost incurred by the Oil Spill Liability Trust Fund as a result of such failure under Section 311(b) (7) (B) of the CWA, 33 U.S.C. §1321(b)(7)(B), as adjusted by 74 *Fed Reg.* 626 (Jan. 7, 2009) (codified at 40 CFR19.4).

EPA may use the information submitted in response to this Information Request in an administrative, civil, or criminal action.

This Information Request is directed to your company, its officers, directors, and employees or agents, including contractors, and its subsidiaries, divisions, facilities and their officers, directors, employees and agents, including contractors. This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*, because it seeks the collection of information from specific individuals or entities as part of an enforcement action or investigation.

You must send the original copy of your response, including all required information, to:

U.S. Environmental Protection Agency, Region 5
Superfund Division – Enforcement and Compliance Assurance Branch
Enforcement Services Section 1, (SE-5J)
77 W. Jackson Blvd.
Chicago, IL 60604-3511
Attn: Mr. William Ryczek, Enforcement Specialist

Please provide duplicate copies of all required information to:

U.S. Environmental Protection Agency, Region 5
Office of Regional Counsel (C-14J)
77 W. Jackson Blvd.
Chicago, IL 60604-3511
Ms. Karen Peaceman, Associate Regional Counsel

Please direct any questions you may have regarding this Information Request to Ms. Peaceman at (312) 353-5751 or Mr. Charles Mikalian, Associate Regional Counsel, at (312) 886-2242.

EPA strongly encourages you to give this matter your immediate attention and to respond to this Information Request within the time specified above. Instructions on how to respond to the questions in Enclosure B to this document are described in Enclosure A.

Thank you for your cooperation in this matter.

Sincerely,



for Jason El-Zein, Chief
Emergency Response Branch, #1

Enclosures

cc: K. Peaceman, U.S. EPA, ORC
C. Mikalian, U.S. EPA, ORC
J. Sobojinski, Enbridge Energy Limited Partnership
D. Coburn, Steptoe & Johnson
W. Hassler, Steptoe & Johnson

ENCLOSURE A
Enbridge Energy, Limited Partnership

Requirement for Document and Information Production
Pursuant to Sections 308(a) and 311(m) of the Act

INSTRUCTIONS

1. A separate, written, narrative response must be made to each Information Request item.
2. Number each answer with the number of the Information Request item to which it corresponds.
3. In answering each Information Request item, identify all contributing sources of information.
4. If information not known or not available to Enbridge Energy, Limited Partnership ("Enbridge" or "you") as of the date of your response should later become known or available, Enbridge must supplement its response to EPA. Moreover, should Enbridge find at any time after the submission of its response that any portion of the submitted information is incorrect, false, or misrepresents the truth, Enbridge must notify EPA as soon as possible.
5. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the question to which it responds.
6. Enbridge must respond to this Information Request on the basis of all information and documents in your possession, custody or control or in the possession, custody or control of Enbridge's former or current employees, agents, servants, contractors or attorneys. Furnish such information as is available to Enbridge regardless of whether or not it is based on personal knowledge, and regardless of source.
7. Enbridge must submit all required information under the Statement of Certification in Enclosure C, signed and dated by the person authorized by Enbridge to respond to the request on its behalf. The signed Statement of Certification certifies, among other things, that the response is complete and contains all information and documentation available to Enbridge and that the responses are true and accurate.
8. If any required information or documents are in the possession of another, or have been transferred voluntarily or involuntarily to others or have been otherwise disposed of, identify each such document or other information, identify the person to whom it was transferred and the person who currently has the document or other information, describe the circumstances surrounding such transfer or other disposition, and state the date or approximate date of such

transfer or other disposition.

CONFIDENTIAL BUSINESS INFORMATION

EPA regulations concerning confidentiality and treatment of business information are contained in 40 C.F.R. Part 2, Subpart B. Information may not be withheld from the Administrator or her authorized representative because it is viewed as confidential. However, when requested to do so, the Administrator is required to consider information to be confidential and to treat it accordingly, if disclosure would divulge methods or processes entitled to protection as trade secrets (33 U.S.C. §§ 1318(b) and 1321(m)(2)(D), and 18 U.S.C. § 1905), except that effluent data is not confidential. The regulations provide that one may assert a business confidentiality claim covering part or all of any trade secret information furnished to EPA at the time such information is provided to EPA. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). Information covered by such claims will be disclosed by EPA only to the extent provided, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. In the event that a request for information is made for release of information covered by such claim of confidentiality or EPA otherwise decides to make a determination as to whether or not such information is entitled to such confidential treatment, notice will be provided to the claimant prior to any release of the information. However, if no claim of confidentiality is made when information is furnished to EPA, any information submitted to EPA may be made available to the public without prior notice.

DEFINITIONS

For the purpose of the Instructions and the Requirements for Production, the following definitions shall apply:

1. The terms “and” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requirements for Production any information which might otherwise be construed to be outside their scope.
2. The terms “describe,” “submit,” or “produce” shall mean turning over to EPA either original or true and accurate duplicate copies of the required information in the possession, custody, or control of Enbridge. Where specific information has not been memorialized in any document but is nonetheless responsive to an Information Request item, you must respond to the Information Request item with a written response. If such required information is not in your possession, custody, or control, then indicate where such information or documents may be obtained.
3. The term “discharge” shall have the same definition as that contained in Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2), which includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
4. The terms “document” and “documents” include writings of any kind, formal or informal, whether or not wholly or partially in handwriting (including by the way of illustration and not by way of limitation), any invoice, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreements, and the like, diary, calendar, desk pad, scrap book, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, report, notice, message, analysis, comparison, graph, chart, interoffice or intraoffice communications, any photograph, sound recording on any type of device, any stored information in an electronic form, e-mails, web pages, word processing files, spreadsheets, PowerPoint presentations, audio and video files, databases, and metadata including: (a) attachments to or enclosures with any documents, and (b) every document referred to in any other document.
5. The term “identify” means, with respect to a natural person, to set forth his full name, present or last known business address, telephone number and e-mail address; the name of the person’s current employer; and a description of the job responsibilities of such person.
6. The term “identify” means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business, and a name of an official representative, with the representative’s title, telephone number and email address.
7. The term “identify” means, with respect to a document, to provide its customary

business description, its date, its number if any (e.g., invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance of the subject matter.

8. The term “Marshall Facility” shall mean the Enbridge Energy, Limited Partnership on-shore pipeline and pumping station located at or near 16000 Division Drive in Marshall, Michigan.

9. The term “HDM Report” shall mean the Kalamazoo River Hydrodynamic and Sediment Transport Model Report, dated April 20, 2012, together with the Addendum, dated May 8, 2012.

10. The term “navigable water” shall have the same definition as that contained in Section 502(7) of the Act, 33 U.S.C. § 1362 (7).

11. The term “oil” shall have the same definition as that contained in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

12. The term “owner or operator” shall have the same definition as that contained in Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).

13. The term “person” shall have the same definition as that contained in Section 502(7) of the Act, 33 U.S.C. § 1362 (5).

14. The term “you” or “Enbridge” shall mean Enbridge Energy, Limited Partnership, and Enbridge’s officers, managers, employees, contractors, trustees, predecessors, successors, assigns, subsidiaries, and agents.

ENCLOSURE B

Enbridge Energy, Limited Partnership

Information Request Pursuant to Sections 308(a) and 311(m) of the Act

EPA is requiring Enbridge Energy, Limited Partnership to produce certain documents and information in response to the enclosed Information Request pursuant to the authority of Sections 308(a) and 311(m) of the Clean Water Act, 33 U.S.C. §§ 1318(a) and 1321(m) and Paragraph 23 of the Administrative Order and Supplement. You must send these documents and this information to us **within 21 calendar days** after you receive this Information Request. Failure to respond fully and truthfully to each Information Request for production within the 21 calendar day time period can result in enforcement action by EPA.

DOCUMENT AND INFORMATION PRODUCTION REQUIREMENTS

Enbridge shall produce the following information and documents relating to the HDM Report and any subsequent modeling work related to the oil spill at the Marshall Facility.

1. **EFDC (FORTRAN) Source Codes and Executable Files:** Enbridge shall provide copies of the specific versions used for producing the HDM Report and any modeling work conducted subsequent to the HDM Report.
2. **EFDC Input Files:** Enbridge shall provide a complete set of the EFDC input files for all model runs presented in the HDM Report, including: Model Calibration Runs (October - November 2011, and July 2010 events), Model Verification Runs (May 16 - 23, 2011, and May 24 - 31, 2011 events), Other Historical Event Model Runs (September 2010; April 9 - 16, 2011; 50-year flood; 100-year flood events), all Sediment Trap Evaluation Model Runs, all Sensitivity Model Runs, and any modeling work conducted subsequent to the HDM Report. The requested files shall be in ASCII format.

Enbridge shall also provide a complete list of all input file types used for the HDM Report and any subsequent modeling work with a detailed text description of the contents of each file type. Please note that model input files submitted previously on February 10, 2012, via posting to Enbridge FTP Site, appear to be at least partly incorrect (e.g., the contents of the submitted input files lxly.inp and dxdy.inp for the riverine and floodplain grids are identical, which should not be the case given the different size and number of grid cells for the two grids). Therefore, Enbridge shall review and resubmit the complete and correct input files.

3. **EFDC Output Files:** Enbridge shall provide a complete set of the EFDC output files for all model runs presented in the HDM Report (see item 2 above, for a complete list of model runs) and any subsequent modeling work conducted since the HDM Report. The requested files shall include all water and sediment mass balance results that are available for the indicated model runs and any modeling work conducted subsequent to the HDM Report. The requested files shall be in ASCII format. Also, Enbridge shall include a

complete list of all output file types used for the HDM Report, with a detailed text description of the contents of each file type.

4. **EFDC Sediment Transport Model Parameterizations:** Enbridge shall provide a complete listing of the specific EFDC sediment processes functions and the associated parameter values that were used for the HDM Report and any modeling work conducted subsequent to the HDM Report. If different functions or parameter values were used by Enbridge for different model runs, then Enbridge shall identify all variations.
5. **GIS Input Data Files:** Enbridge shall provide input data Geographical Information System (GIS) files used for the HDM Report and any modeling work conducted subsequent to the HDM Report and/or which were not previously submitted to the U.S. EPA. These files include: a GIS shape file of the river bank lines; a GIS shape file of the Kalamazoo River Floodplain Core Assignments an SSURGO Map Units; the final GIS raster file of floodplain topography created from the 2011 LiDAR contour data and Strike poling data (e.g., as described in the HDM Report, Section 3.3.1.2, page 12); the final GIS raster file of river channel bathymetry created from the combined 2011 poling HEC-RAS cross-section data (e.g., as described in the HDM Report, Section 3.3.1.1, page 11); a merged GIS raster file of floodplain topography and river bathymetry, if it exists; GIS shape files containing data presented in HDM Report Figures 3-16, 3-17, 3-18; and GIS shape files containing data presented in HDM Report Figures 3-20, 3-21, 3-22.
6. **Dam Configuration Data:** Enbridge shall provide copies of all supporting data regarding the dimensions and elevations of the three dams located within the Kalamazoo River project area (i.e., Ceresco Dam, the Kalamazoo Dam at Battle Creek, and the Morrow Lake Dam) that were used for development of the results presented in the HDM Report. The requested data shall include tabulated summaries of all survey measurements of dam features made by Enbridge representatives, and complete copies of all reports, correspondence, or drawings that contain dimensions or elevation data for the dams and associated features. Summary tables of survey data shall include the measurement dates and times, the survey instrument make and model, and the company affiliation of field personnel performing the work.
7. **Morrow Lake Dam Operational Data:** Enbridge shall provide complete copies of all operational data or records for Morrow Lake and Morrow Lake Dam that have been obtained from the dam operator (i.e., STS HydroPower, Ltd.) or any other sources. The information provided shall not be limited to any particular time period and shall include, but is not limited to, the following types of data: water surface elevation measurement records for Morrow Lake; water discharge records for dam components; records of gate positioning (including gate identifier, dates, times, gate position); comparison tables, charts or diagrams relating gate position to water discharge; operations documents (manuals or reports); turbine operation records; or electrical power generation records.
8. **Data Files for Calibration/Verification:** Enbridge shall provide a complete set of the data files used for model calibration/verification including, but not limited to, the following: all site staff gage water surface elevation data (WSE; including gage location and elevation survey records), oil mark survey data (GIS shape file format), suspended sediment concentration data (SSC; estimated or measured), and rating curves. It is noted that ADCP velocity station measurements and tributary inflow estimations were provided

previously in a February 10, 2012 submittal and this information does not need to be resubmitted. Requested files not specified as GIS shape files shall be provided in Microsoft Excel spreadsheet or ASCII text format.

9. **GIS Output Data Files:** Enbridge shall provide a complete set of GIS shape files containing graphical model output data for all model runs, as displayed on figures included in the HDM Report and any modeling work conducted subsequent to the HDM Report. Specific GIS shape files for graphical output data presented in HDM Report Figures 4-13 to 4-28, Figures 5-7 to 5-22, Figures 6-3 to 6-30, and Figures 7-2 to 7-37 shall be submitted.
10. **Subsequent Sediment Transport Modeling and Associated Data:** Enbridge shall provide a description and associated files for any sediment transport modeling that has been done by Enbridge subsequent to the HDM Report, and/or any data that may have been collected for future sediment transport modeling such as erodibility tests, sedflume tests, core descriptions, particle size analyses, bulk density, and/or suspended sediment concentrations and loads.

ENCLOSURE C**ENBRIDGE PIPELINE CRUDE OIL RELEASE SITE****Enbridge Energy, Limited Partnership****STATEMENT OF CERTIFICATION**

I certify that the foregoing responses and information submitted were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

Signature: _____

Name (Please print or type): _____

Title: _____

Telephone Number: _____

Date: _____